

ASSEMBLY BILL

No. 381

Introduced by Assembly Member Montanez

February 11, 2005

An act to amend Section 6752 of the Family Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 381, as introduced, Montanez. Minors: artistic employment contracts.

Existing law regulates certain contracts for artistic employment between an unemancipated minor and 3rd parties, including, but not limited to, employment as an actor, dancer, musician, comedian, singer, stuntperson, voice-over artist, or other performer or entertainer, or sports participant.

This bill would make clarifying and other nonsubstantive, technical changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6752 of the Family Code is amended to
2 read:
3 6752. (a) A parent or guardian entitled to the physical
4 custody, care, and control of a minor who enters into a contract
5 of a type described in Section 6750 shall provide a certified copy
6 of the minor's birth certificate indicating the minor's minority to
7 the other party or parties to the contract and in addition, in the

1 case of a guardian, a certified copy of the court document
2 appointing the person as the minor's legal guardian.

3 (b) (1) Notwithstanding any other statute, in an order
4 approving a minor's contract of a type described in Section 6750,
5 the court shall require that 15 percent of the minor's gross
6 earnings pursuant to the contract be set aside by the minor's
7 employer in trust, in an account or other savings plan, and
8 preserved for the benefit of the minor in accordance with Section
9 6753.

10 (2) The court shall require that at least one parent or legal
11 guardian, as the case may be, entitled to the physical custody,
12 care, and control of the minor at the time the order is issued be
13 appointed as trustee of the funds ordered to be set aside in trust
14 for the benefit of the minor, unless the court shall determine that
15 appointment of a different individual, individuals, entity, or
16 entities as trustee or trustees is required in the best interest of the
17 minor.

18 (3) Within 10 business days after commencement of
19 employment, the trustee or trustees of the funds ordered to be set
20 aside in trust shall provide the minor's employer with a true and
21 accurate photocopy of the trustee's statement pursuant to Section
22 6753. Upon presentation of the trustee's statement offered
23 pursuant to this subdivision, the employer shall provide the
24 parent or guardian with a written acknowledgement of receipt of
25 the statement.

26 (4) The minor's employer shall deposit or disburse the 15
27 percent of the minor's gross earnings pursuant to the contract
28 within 15 business days after receiving a true and accurate copy
29 of the trustee's statement pursuant to subdivision (c) of Section
30 6753, a certified copy of the minor's birth certificate, and, in the
31 case of a guardian, a certified copy of the court document
32 appointing the person as the minor's guardian. Notwithstanding
33 any other provision of law, *except as provided in paragraph (9)*,
34 pending receipt of these documents, the minor's employer shall
35 hold, for the benefit of the minor, the 15 percent of the minor's
36 gross earnings pursuant to the contract.

37 (5) When making the initial deposit of funds, the minor's
38 employer shall provide written notification to the financial
39 institution or company that the funds are subject to Section 6753.

1 Upon receipt of the court order, the minor's employer shall
2 provide the financial institution with a copy of the order.

3 (6) Once the minor's employer deposits the set aside funds
4 pursuant to Section 6753, in trust, in an account or other savings
5 plan, the minor's employer shall have no further obligation or
6 duty to monitor or account for the funds. The trustee or trustees
7 of the trust shall be the only individual, individuals, entity, or
8 entities with the obligation or duty to monitor and account for
9 those funds once they have been deposited by the minor's
10 employer. The trustee or trustees shall do an annual accounting
11 of the funds held in trust, in an account or other savings plan, in
12 accordance with Sections 16062 and 16063 of the Probate Code.

13 (7) The court shall have continuing jurisdiction over the trust
14 established pursuant to the order and may at any time, upon
15 petition of the parent or legal guardian, the minor, through his or
16 her guardian ad litem, or the trustee or trustees, on good cause
17 shown, order that the trust be amended or terminated,
18 notwithstanding the provisions of the declaration of trust. An
19 order amending or terminating a trust may be made only after
20 reasonable notice to the beneficiary and, if the beneficiary is then
21 a minor, to the parent or guardian, if any, and to the trustee or
22 trustees of the funds with opportunity for all parties to appear and
23 be heard.

24 (8) A parent or guardian entitled to the physical custody, care,
25 and control of the minor shall promptly notify the minor's
26 employer in writing of any change in facts that affect the
27 employer's obligation or ability to set aside the funds in
28 accordance with ~~the order~~ *this section*, including, but not limited
29 to, a change of financial institution or account number, or the
30 existence of a new or amended order issued pursuant to
31 paragraph (7) amending or terminating the employer's
32 obligations under this section. The written notification shall be
33 accompanied by a true and accurate photocopy of the trustee's
34 statement pursuant to Section 6753 and, if applicable, a true and
35 accurate photocopy of the new or amended order.

36 (9) (A) If a parent, guardian, or trustee fails to provide the
37 minor's employer with a true and accurate photocopy of the
38 trustee's statement pursuant to Section 6753 within 180 days
39 after the commencement of employment, the employer shall
40 forward to The Actors' Fund of America 15 percent of the

1 minor's gross earnings pursuant to the contract, together with the
2 minor's name and, if known, the minor's social security number,
3 birth date, last known address, telephone number, e-mail address,
4 dates of employment, and title of the project on which the minor
5 was employed, and shall notify the parent, guardian, or trustee of
6 that transfer by certified mail to the last known address. Upon
7 receipt of those forwarded funds, The Actors' Fund of America
8 shall become the trustee of those funds and the minor's employer
9 shall have no further obligation or duty to monitor or account for
10 the funds.

11 (B) The Actors' Fund of America shall make its best efforts to
12 notify the parent, guardian, or trustee of their responsibilities to
13 provide a true and accurate photocopy of the trustee's statement
14 pursuant to Section 6753, and in the case of a guardian, a
15 certified copy of the court document appointing the person as the
16 minor's legal guardian. Within 15 business days after receiving
17 those documents, The Actors' Fund of America shall deposit or
18 disburse the funds as directed by the trustee's statement *in*
19 *accordance with Section 6753*. When making that deposit or
20 disbursal of the funds, The Actors' Fund of America shall
21 provide to the financial institution notice that the funds are
22 subject to Section 6753 and a copy of each applicable order, and
23 shall thereafter have no further obligation or duty to monitor or
24 account for the funds.

25 ~~(e)~~

26 (C) The Actors' Fund of America shall notify each beneficiary
27 of his or her entitlement to the funds that it holds for the
28 beneficiary within 60 days after the date on which its records
29 indicated that the beneficiary has attained 18 years of age or the
30 date on which it received notice that the minor has been
31 emancipated, by sending that notice to the last known address for
32 the beneficiary or, if it has no specific separate address for the
33 beneficiary, to the beneficiary's parent or guardian.

34 ~~(d)~~

35 (c) (1) Notwithstanding any other statute, for any minor's
36 contract of a type described in Section 6750 that is not being
37 submitted for approval by the court pursuant to Section 6751, or
38 for which the court has issued a final order denying approval, 15
39 percent of the minor's gross earnings pursuant to the contract
40 shall be set aside by the minor's employer in trust, in an account

1 or other savings plan, and preserved for the benefit of the minor
 2 in accordance with Section 6753. At least one parent or legal
 3 guardian, as the case may be, entitled to the physical custody,
 4 care, and control of the minor, shall be the trustee of the funds set
 5 aside for the benefit of the minor, unless the court, upon petition
 6 by the parent or legal guardian, the minor, through his or her
 7 guardian ad litem, or the trustee or trustees of the trust, ~~shall~~
 8 ~~determine~~ *determines* that appointment of a different individual,
 9 individuals, entity, or entities as trustee or trustees is required in
 10 the best interest of the minor *and issues an order appointing a*
 11 *different individual, individuals, entity, or entities as trustee or*
 12 *trustees.*

13 (2) Within 10 business days of commencement after
 14 employment, a parent or guardian, as the case may be, entitled to
 15 the physical custody, care, and control of the minor shall provide
 16 the minor's employer with a true and accurate photocopy of the
 17 trustee's statement pursuant to Section 6753 and in addition, in
 18 the case of a guardian, a certified copy of the court document
 19 appointing the person as the minor's legal guardian. Upon
 20 presentation of the trustee's statement offered pursuant to this
 21 subdivision, the employer shall provide the parent or guardian
 22 with a written acknowledgement of receipt of the statement.

23 (3) The minor's employer shall deposit 15 percent of the
 24 minor's gross earnings pursuant to the contract within 15
 25 business days of receiving the trustee's statement pursuant to
 26 Section 6753, or if the court denies approval of the contract,
 27 within 15 business days of receiving a final order denying
 28 approval of the contract. Notwithstanding any other statute,
 29 *except as provided in paragraph (7)*, pending receipt of the
 30 trustee's statement or the final court order, the minor's employer
 31 shall hold for the benefit of the minor the 15 percent of the
 32 minor's gross earnings pursuant to the contract. When making
 33 the initial deposit of funds, the minor's employer shall provide
 34 written notification to the financial institution or company that
 35 the funds are subject to Section 6753.

36 (4) Once the minor's employer deposits the set aside funds in
 37 trust, in an account or other savings plan pursuant to Section
 38 6753, the minor's employer shall have no further obligation or
 39 duty to monitor or account for the funds. The trustee or trustees
 40 of the trust shall be the only individual, individuals, entity, or

1 entities with the obligation or duty to monitor and account for
2 those funds once they have been deposited by the minor's
3 employer. The trustee or trustees shall do an annual accounting
4 of the funds held in trust, in an account or other savings plan, in
5 accordance with Sections 16062 and 16063 of the Probate Code.

6 (5) Upon petition of the parent or legal guardian, the minor,
7 through his or her guardian ad litem, or the trustee or trustees of
8 the trust, to the superior court in any county in which the minor
9 resides or in which the trust is established, the court may at any
10 time, on good cause shown, order that the trust be amended or
11 terminated, notwithstanding the provisions of the declaration of
12 trust. An order amending or terminating a trust may be made
13 only after reasonable notice to the beneficiary and, if the
14 beneficiary is then a minor, to the parent or guardian, if any, and
15 to the trustee or trustees of the funds with opportunity for all
16 parties to appear and be heard.

17 (6) A parent or guardian entitled to the physical custody, care,
18 and control of the minor shall promptly notify the minor's
19 employer in writing of any change in facts that affect the
20 employer's obligation or ability to set aside funds for the benefit
21 of the minor in accordance with this section, including, but not
22 limited to, a change of financial institution or account number, or
23 the existence of a new or amended order issued pursuant to
24 paragraph (5) amending or terminating the employer's
25 obligations under this section. The written notification shall be
26 accompanied by a true and accurate photocopy of the trustee's
27 statement and attachments pursuant to Section 6753 and, if
28 applicable, a true and accurate photocopy of the new or amended
29 order.

30 (7) (A) If a parent, guardian, or trustee fails to provide the
31 minor's employer with a true and accurate photocopy of the
32 trustee's statement pursuant to Section 6753, within 180 days
33 after commencement of employment, the employer shall forward
34 to The Actors' Fund of America the 15 percent of the minor's
35 gross earnings pursuant to the contract, together with the minor's
36 name and, if known, the minor's social security number, birth
37 date, last known address, telephone number, e-mail address,
38 dates of employment, and the title of the project on which the
39 minor was employed, and shall notify the parent, guardian, or
40 trustee of that transfer by certified mail to the last known address.

1 Upon receipt of those forwarded funds, The Actors' Fund of
2 America shall become the trustee of those funds and the minor's
3 employer shall have no further obligation or duty to monitor or
4 account for the funds.

5 (B) The Actors' Fund of America shall make best efforts to
6 notify the parent, guardian, or trustee of their responsibilities to
7 provide a true and accurate photocopy of the trustee's statement
8 pursuant to Section 6753 and in the case of a guardian, a certified
9 copy of the court document appointing the person as the minor's
10 legal guardian. After receiving those documents, The Actors'
11 Fund of America shall deposit or disburse the funds as directed
12 by the trustee's statement, and in accordance with Section 6753,
13 within 15 business days. When making that deposit or disbursal
14 of the funds, The Actors' Fund of America shall provide notice
15 to the financial institution that the funds are subject to Section
16 6753, and shall thereafter have no further obligation or duty to
17 monitor or account for the funds.

18 (C) The Actors' Fund of America shall notify each beneficiary
19 of his or her entitlement to the funds that it holds for the
20 beneficiary, within 60 days after the date on which its records
21 indicate that the beneficiary has attained 18 years of age or the
22 date on which it received notice that the minor has been
23 emancipated, by sending that notice to the last known address
24 that it has for the beneficiary, or to the beneficiary's parent or
25 guardian, where it has no specific separate address for the
26 beneficiary.

27 ~~(e)~~

28 (d) Where a parent or guardian is entitled to the physical
29 custody, care, and control of a minor who enters into a contract
30 of a type described in Section 6750, the relationship between the
31 parent or guardian and the minor is a fiduciary relationship that is
32 governed by the law of trusts, whether or not a court has issued a
33 formal order to that effect. The parent or guardian acting in his or
34 her fiduciary relationship, shall, with the earnings and
35 accumulations of the minor under the contract, pay all liabilities
36 incurred by the minor under the contract, including, but not
37 limited to, payments for taxes on all earnings, including taxes on
38 the amounts set aside under subdivisions (b) and (c) of this
39 section, and payments for personal or professional services
40 rendered to the minor or the business related to the contract.

1 Nothing in this subdivision shall be construed to alter any other
2 existing responsibilities of a parent or legal guardian to provide
3 for the support of a minor child.

4 (f)

5 (e) (1) Except as otherwise provided in this subdivision, The
6 Actors' Fund of America, as trustee of unclaimed set-aside funds,
7 shall manage and administer those funds in the same manner as a
8 trustee under the Probate Code. Notwithstanding the foregoing,
9 The Actors' Fund of America is not required to open separate,
10 segregated individual trust accounts for each beneficiary but may
11 hold the set-aside funds in a single, segregated master account for
12 all beneficiaries, provided it maintains accounting records for
13 each beneficiary's interest in the master account.

14 (2) The Actors' Fund of America shall have the right to
15 transfer funds from the master account, or from a beneficiary's
16 segregated account to its general account in an amount equal to
17 the beneficiary's balance. The Actors' Fund of America shall
18 have the right to use those funds transferred to its general account
19 to provide programs and services for young performers. This use
20 of the funds does not limit or alter The Actors' Fund of
21 America's obligation to disburse the set-aside funds to the
22 beneficiary, or the beneficiary's parent, guardian, trustee, or
23 estate pursuant to this chapter.

24 (3) (A) Upon receiving a certified copy of the beneficiary's
25 birth certificate, or United States passport, and a true and
26 accurate photocopy of the trustee's statement pursuant to Section
27 6753, The Actors' Fund of America shall transfer the
28 beneficiary's balance to ~~the~~ a trust account established for the
29 beneficiary *in accordance with Section 6753*.

30 (B) The Actors' Fund of America shall disburse the set-aside
31 funds to a beneficiary who has attained 18 years of age, after
32 receiving proof of the beneficiary's identity and a certified copy
33 of the beneficiary's birth certificate or United States passport, or
34 to a beneficiary who has been emancipated, after receiving proof
35 of the beneficiary's identity and appropriate documentation
36 evidencing the beneficiary's emancipation.

37 (C) The Actors' Fund of America shall disburse the set-aside
38 funds to the estate of a deceased beneficiary after receiving
39 appropriate documentation evidencing the death of the

1 beneficiary and the claimant's authority to collect those funds on
2 behalf of the beneficiary.

3 ~~(g)~~

4 ~~(f)~~ (1) The beneficiary of an account held by The Actors'
5 Fund of America pursuant to this section shall be entitled to
6 receive imputed interest on the balance in his or her account for
7 the entire period during which the account is held at a rate equal
8 to the lesser of the federal reserve rate in effect on the last
9 business day of the prior calendar quarter or the national average
10 money market rate as published in the New York Times on the
11 last Sunday of the prior calendar quarter, adjusted quarterly.

12 (2) The Actors' Fund of America may assess and deduct from
13 the balance in the beneficiary's account reasonable management,
14 administrative, and investment expenses, including
15 beneficiary-specific fees for initial set up, account notifications
16 and account disbursements, and a reasonably allocable share of
17 management, administrative, and investment expenses of the
18 master account. No fees may be charged to any beneficiary's
19 account during the first year that the account is held by The
20 Actors' Fund of America.

21 (3) Notwithstanding paragraph (2), the amount paid on any
22 claim made by a beneficiary or the beneficiary's parent or
23 guardian after The Actors' Fund of America receives and holds
24 funds pursuant to this section may not be less than the amount of
25 the funds received plus the imputed interest.

26 ~~(h)~~

27 ~~(g)~~ Notwithstanding any provision of this chapter to the
28 contrary, any minor's employer holding set-aside funds under
29 this chapter, which funds remain unclaimed 180 days after the
30 effective date hereof, shall forward those unclaimed funds to The
31 Actors' Fund of America, along with the minor's name and, if
32 known, the minor's social security number, birth date, last known
33 address, telephone number, e-mail address, dates of employment,
34 and the title of the project on which the minor was employed, and
35 shall notify the parent, guardian, or trustee of that transfer by
36 certified mail to the last known address. Upon receipt of those
37 forwarded funds by The Actors' Fund of America, the minor's
38 employer shall have no further obligation or duty to monitor or
39 account for the funds.

40 ~~(i)~~

1 (h) All funds received by The Actors' Fund of America
2 pursuant to this section shall be exempt from the application of
3 the Unclaimed Property Law (Title 10 (commencing with
4 Section 1300) of Part 3 of the Code of Civil Procedure),
5 including, but not limited to, Section 1510 of the Code of Civil
6 Procedure.

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